

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION (at Cincinnati)

STEVEN D. KING : Civil Action No. C-1-01-802  
Plaintiff, :  
: (Judge Herman J. Weber)  
: (Magistrate Timothy S. Hogan)  
v. :  
: **MEMORANDUM OF DEFENDANT**  
CSX TRANSPORTATION, INC. : **WITH RESPECT TO PLAINTIFF'S**  
Defendant. : **MOTION TO CONTINUE TRIAL**

The defendant neither joins in, nor opposes, the motion of the plaintiff to continue the trial of this case, recognizing that the decision on this motion is a matter within the sound discretion of the Court.

The defendant does wish to point out, however, its disagreement with one sentence contained in the plaintiff's memorandum, namely the second sentence of paragraph 8 thereof in which it is asserted that the plaintiff's economic loss might be increased if he is not able to return to his previous position as a locomotive engineer. The defendant has been paying for the plaintiff's tuition and other expenses at Thomas More College where the plaintiff has been achieving very high grades. It is expected that he will soon be awarded his degree from that institution and will thereafter have an earnings potential equal to, or greater than, that of a locomotive engineer.

In the event the plaintiff is recertified, and re-qualified, as a locomotive engineer and thereafter asserts that he is physically unable to function in that capacity, the defendant reserves its right to offer into evidence, upon trial of this case, the plaintiff's Motion to Continue and the attached return to work certificate of Dr. John J. Larkin. The defendant also reserves its right, in that eventuality, to seek a supplemental independent

medical evaluation of the plaintiff by Dr. Thomas A. Bender.

Respectfully submitted,

s/James L. O'Connell

James L. O'Connell

(#0009501)

***Trial Attorney for Defendant***

312 Walnut Street, Suite 2300

Cincinnati, Ohio 45202-4091

OF COUNSEL:

LINDHORST & DREIDAME

312 Walnut Street, Suite 2300

Cincinnati, Ohio 45202-4091

(513) 421-6630

(513) 421-0212 (fax)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served upon: **Robert E. Harrington, Jr. and Daniel W. Pisani**, HARRINGTON, THOMPSON, ACKER & HARRINGTON, LTD., 310 South Michigan Avenue, Suite 2000, Chicago, Illinois 60604, and **Charles J. Davis**, PATSFALL, YEAGER & PFLUM, 1800 Fourth & Vine Tower, One West Fourth Street, Cincinnati, Ohio 45202, by ordinary U.S. mail, this 6th day of November, 2003.

s/James L. O'Connell

James L. O'Connell

Attorney at Law